IN THE HIGH COURT OF JUDICATURE AT BOBBY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 244 OF 2003

The General Secretary,)
The BEST Worker's Union,)
42, Kennedy Bridges,)
Mumbai - 400 004) .. Petitioner

Vs.

1. The General Manager,)
The BEST Undertaking,)
BEST House, Colaba,)
Mumbai - 400 001.)

2. The Presiding Officer,)
IInd Labour Court, Mumbai)

3. The Learned Member,)
Industrial Court, Paltan)
Road, Mumbai.) .. Respondents

Mrs. Neeta Karnik, advocate for petitioner.

Mr. S. K. Talsania, senior counsel with Ms. Rita N. Vora i/b M/s. Crowford Bayley & Co. for respondent No.1.

CORAM: ANOOP V. MOHTA, J.

DATE : MARCH 10, 2006.

ORAL JUDGMENT :

1. The petitioner being a General Secretary, was an active Union member and an office bearer of the BEST Workers Union. He, therefore, claimed to

be a protected employee under S. 101 of the Bombay Industrial Relations Act (BIR Act). The petitioner was charge sheeted under Standing Order Clause 20(i) and (r). Due enquiry was conducted. As per the charge sheet dated 6th May 1995, it was alleged that the petitioner assaulted to Acharekar, Ashok Honmukhe and one Ramesh Gaonkar, fellow workers, with Bamboo sticks, outside Dindoshi Bus Station gate, at about 9.15 p.m., on 6-5-1995. This was a second incident, as alleged. The Criminal prosecutions are also initiated against the petitioner. Criminal Case bearing C.R. No. 293/95, against said employee, under S. 320, 307, and 324 of Indian Penal Code is still pending. As alleged, the charge sheet was issued some times in the year January 1996 i.e. beyond a period of six months, as contemplated in Section 78(1)(D)(i) of the BIR Act. After due inquiry, a punishment of dismissal was recommended by the enquiry officer on 11-6-1996. The said punishment was implemented on 22-10-1997, after getting due permission from the Labour Court.

2. Respondent no.1 the BEST Undertaking had filed an application (BIR-M) No. 824/96 for

permission to impose punishment of dismissal dt. 12th June, 1996. There was a delay of more than two years. The second appeal was rejected on 17/2/1998.

. On 30th March 1998 the petitioner approached respondent no.1, but in vain.

3. Being aggrieved by the order dated 17th February, 1998 petitioner therefore, preferred an application (BIR) No. 31 of 1998 before the IInd Labour Court, Mumbai. By an order of 7th March, 2002 the Presiding Officer rejected the said Application by holding that petitioner was not entitled for the reinstatement and the continuity of service. That resulted into confirmation of the dismissal order.

4. An Appeal (IC) No. 47 of 2002 preferred by the petitioner before the Industrial Court. By an order dated 26th June, 2002 the appeal was also dismissed. Therefore, present Writ Petition.

5. After going through the record and perusal of the documents referred and relied by the courts

below and in view of the concurrent findings given by the authorities of confirming the dismissal order based on the duly conducted enquiry and in the facts and circumstances of the case, I see there is no reason to interfere with the findings given by the Courts below. There is a concurrent finding given by all Courts, whereby it has been held that the petitioner's order of dismissal based on the Enquiry is within the frame work of law and the record. There is nothing to interfere with in such matters.

6. The Apex Court has settled the issue that pending criminal prosecution no way affect or prevent the Competent Authorities, to proceed with the enquiry, as well as, to pass an order of punishment or such other order based on the Labour Laws or the service conditions. The Departmental Enquiry, therefore, can not seriously prejudice the delinquent in his defence in the criminal cases, as sought to be contended in the present case. There is no denial of natural justice to the said employee in such matters. The reference to the Judgment of the Apex Court in **APSRTC Vs. Md. Yousif Miya 1997, II LLJ 902**, in

no way assists the petitioner to support his case. In the fact and circumstances of the present case, the Departmental Enquiry in no way would seriously prejudice the delinquent in the criminal case.

7. An another Apex Court's decision, in State of **Rajasthan Vs. I.K. Meena, 1997-I- LLJ 746** is also not assisting the petitioner. In view of recent Apex Court decision there is no question of stay of the departmental inquiry, pending criminal trial,in the present case. If the departmental proceeding and the criminal case, are based on identical or similar set of facts, how it affect the defence of such employee would depend upon the fact and circumstances of the case. The Apex Court as cited by the learned counsel for the petitioner - **Khusheshwar Debey, Appellant Vs. M/s. Bharat Coking Coal Ltd. and others ((1988) 4 Supreme Court Cases 319)** has observed that -

> The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class

> of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline. However, departmental enquiry and the incidence as referred in the present case of assault and earlier incidence as referred from, are of grave nature, and the enquiry report based on the material and evidence on record, recommended the dismissal order and as the same has been confirmed by the Courts below, after reappreciating the materials placed and contentions as raised by the petitioner, I see, there is no reason to accept this contention that the departmental proceeding ought to have been stayed and or on observations or reasoning reported in the enquiry report, would cause grave injustice to the petitioner.

8. The Apex Court has observed in **State of Rajasthan Vs. Shri B. K. Meena & others (JT**

1996(8) S.C.684) that -

> There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be. Whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. **The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different**. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require re-consideration if the criminal case gets unduly delayed.
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> (emphasis added)

9. The aforesaid view (**State of Rajathan Vs. I.K. Meena) (cited supra)** has been reiterated in **Krishna T. Estate Vs. Akhil Bhartiya Majdoor Sangh (2004 (8) SCC 200),** in reference to the effect of the findings of findings, in criminal proceedings, on domestic enquiry in respect of the same charges. See also **T.N.C.S. Corp.Ltd. X K.**

Meerabai 2006(2) S.C.C. 255.

10. Both the Courts have also considered Section 78(1)(D)(i) of the BIR Act and found that in the facts and circumstances of the case, there was no substance in the grounds of appeal. There is a clear finding given, whereby the issue about the limitation, decided against the petitioner. I am in agreement with the reasoning given in view of the Apex Court decision, in - **The Municipal Corporation of Greater Bombay, Appellant Vs. The B.E.S.T. Workers' Union, Respondent (AIR 1973 Supreme court 883)**, while interpreting the Section 78(1)(D)(i) of BIR Act, whereby, it has been held that the said provisions are not mandatory but only directory. Therefore, employer can explain the delay, if any, in such cases also. The reasoning given by the courts below, therefore, cannot be said to be perverse or contrary to the law, specially when after considering the merit of the matter, as respondent no.1 explained the delay by leading evidence in support of the decision.

11. The learned counsel for the petitioner Mrs. Neeta Karnik, further contended that charges

levelled against the petitioner were based on Standing Order No. 20(i) and (r).She therefore, contended that the offences committed should be in the course of employment in the premises of the undertaking and the assailant himself should be on duty and wearing the uniform. There was no such evidence on record against the petitioner and as the assault was not in connection with the business of the undertaking, the Courts below are wrong in passing the impugned order against the petitioner by charging him for alleged misconduct. She has strongly relied on a decision of - **P.V. Pujari & Ors Vs. Municipal Corporation of Greater Bombay & Ors. (1994 I CLR 730) (Single Bench)** and contended that by interpreting the same Standing Order in **P.V. Pujari's case**, this Court had quashed and set aside such order and the said workman was reinstated with full back wages.

12. The learned senior counsel Mr.S.K. Talsania for respondent no.1 pointed out that in Appeal No. 254/94 [Municipal Corporation of Gr. Bombay Vs. P.V. Pujari & Ors.] above view of Single Judge has been reversed and that is not a good law. The relevant para of the Division Bench

Judgment dated 6th April 1995, clinches the issue against the petitioner, is reproduced as under-

> We are unable to share the observation of the learned Single Judge. The expression 'fellow employee' is of wide ambit and takes in its sweep every employee of the Undertaking including the officers, superior or otherwise. The expression 'fellow employee' connotes all employees working under an employer and in the present case, the Undertaking. The expression 'fellow servant' as defined in Black's Law Dictionary (6th Edition) reads as follows:-
>
> > Fellow servant: One who works for and is controlled by the same employer; a co-worker. Those engaged in same type of work, under the control of a common employer."
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> It is, therefore, obvious that clause 20(r) of the Standing Orders provides that when an employee of the Undertaking assaults any fellow employee i.e. one who is working with the Undertaking, then that amounts to a misconduct. It is difficult to appreciate how the learned Single Judge felt that a fellow employee in common parlance would mean those persons who are working together at a particular point of time or at a particular place. It is not permissible to restrict the ambit of expression 'fellow employee' to a particular point of time or a particular place. The employees under the common employer are fellow employees wherever they are posted or wherever they are at particular point of time.

> It is, therefore, not possible to share the view of the learned Single Judge that the workman could not have been held guilty of misconduct under clause 20(r) of the Standing Orders and consequently the charges were not established. The finding of Enquiry Officer and Industrial Tribunal that a workman contravened clause 20(i) is also appropriate. The Labour Court was in error to hold that assault was not on the premises of Undertaking or at the place of employment and therefore, clause 20(i) is not attracted. Though the assault was on a public road, it had direct nexus to activities at place of employment in view of finding that attack was result of union rivalry."

. In view of above finding given by the Division Bench by interpreting the same provisions of Standing Order, I am also convinced that the impugned action was correct.

13. The Courts below observed rightly that the assaults/incidents falls within the ambit of Clause 20(i) and 20(r) of the Standing Order as a misconduct and there need not be any nexus or connection with the employment; the enquiry was fair and proper and within the framework of the law and the record.

14. In the facts and circumstances of the case,

looking to the employee's conduct, as recorded by the Courts below, I am not inclined to interfere with the findings as well as the orders passed by the Courts below.

15. In view of this, the petition is dismissed. Rule is discharged.

16. No orders as to costs.

ANOOP V. MOHTA, J.